BUSINESS AND COMMERCE CODE

TITLE 5. REGULATION OF BUSINESSES AND SERVICES

SUBTITLE A. GENERAL PRACTICES

CHAPTER 72. BUSINESS RECORDS

SUBCHAPTER A. DISPOSAL OF CERTAIN BUSINESS RECORDS

Sec. 72.001. DEFINITIONS. In this subchapter:

(1) "Business record" means letters, words, sounds, or numbers, or the equivalent of letters, words, sounds, or numbers, recorded in the operation of a business by:

(A) handwriting;

(B) typewriting;

(C) printing;

(D) photostat;

(E) photograph;

(F) magnetic impulse;

(G) mechanical or electronic recording;

(H) digitized optical image; or

(I) another form of data compilation.

(2) "Personal identifying information" means an individual's first name or initial and last name in combination with one or more of the following:

(A) date of birth;

(B) social security number or other government-issued identification number;

(C) mother's maiden name;

(D) unique biometric data, including the individual's fingerprint, voice data, or retina or iris image;

(E) unique electronic identification number, address, or routing code;

(F) telecommunication access device as defined by Section 32.51, Penal Code, including debit or credit card information; or

(G) financial institution account number or any other financial information.

(3) "Reproduction" means a counterpart of an original

business record produced by:

(A) production from the same impression or the same matrix as the original;

(B) photography, including an enlargement or miniature;

(C) mechanical or electronic rerecording;

(D) chemical reproduction;

(E) digitized optical imaging; or

(F) another technique that accurately reproduces the original.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 72.002. DESTRUCTION OF CERTAIN BUSINESS RECORDS. (a) A business record required to be retained by a law of this state may be destroyed at any time after the third anniversary of the date the business record was created.

(b) Subsection (a) does not apply if a law or rule applicable to the business record prescribes a different retention period or procedure for disposal.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 72.003. RETENTION OF REPRODUCTION OF BUSINESS RECORDS. A law of this state that requires retention of a business record is satisfied by retention of a reproduction of the original record.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

Sec. 72.004. DISPOSAL OF BUSINESS RECORDS CONTAINING PERSONAL IDENTIFYING INFORMATION. (a) This section does not apply to:

(1) a financial institution as defined by 15 U.S.C. Section 6809; or

(2) a covered entity as defined by Section 601.001 or 602.001, Insurance Code.

(b) When a business disposes of a business record that

contains personal identifying information of a customer of the business, the business shall modify, by shredding, erasing, or other means, the personal identifying information so as to make the information unreadable or undecipherable.

(c) A business is considered to comply with Subsection (b) if the business contracts with a person engaged in the business of disposing of records for the modification of personal identifying information on behalf of the business in accordance with that subsection.

(d) A business that disposes of a business record without complying with Subsection (b) is liable for a civil penalty in an amount not to exceed $500 for each business record. The attorney general may bring an action against the business to:

(1) recover the civil penalty;

(2) obtain any other remedy, including injunctive relief; and

(3) recover costs and reasonable attorney's fees incurred in bringing the action.

(e) A business that in good faith modifies a business record as required by Subsection (b) is not liable for a civil penalty under Subsection (d) if the business record is reconstructed, wholly or partly, through extraordinary means.

(f) Subsection (b) does not require a business to modify a business record if:

(1) the business is required to retain the business record under another law; or

(2) the business record is historically significant and:

(A) there is no potential for identity theft or fraud while the business retains custody of the business record; or

(B) the business record is transferred to a professionally managed historical repository.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.

SUBCHAPTER B. DELETION OF CERTAIN RECORDS OR INFORMATION RELATING

Sec. 72.051. REQUIRED DELETION OF CERTAIN ELECTRONIC RECORDS. (a) In this section, "law enforcement agency" has the meaning assigned by Article 59.01, Code of Criminal Procedure.

(b) This section applies only to a business that accepts checks from customers in the ordinary course of business. This section does not apply to a financial institution as defined by 31 U.S.C. Section 5312(a)(2), as amended.

(c) A business shall delete any electronic record indicating that a customer has issued a dishonored check or any other information except for a checking account number or bank routing transit number on which the business bases a refusal to accept a check from a customer. The record must be deleted not later than the 30th day after the date:

(1) the customer and the business agree that the information contained in the electronic record is incorrect; or

(2) the customer presents to the business:

(A) a copy of a report filed by the customer with a law enforcement agency stating that the dishonored check was unauthorized; and

(B) a written statement of the customer indicating that the dishonored check was unauthorized.

(d) A business that violates Subsection (c) is liable to this state for a civil penalty in an amount not to exceed $1,000. The attorney general may:

(1) bring an action to recover the civil penalty; and

(2) recover reasonable expenses incurred in recovering the penalty, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

Added by Acts 2007, 80th Leg., R.S., Ch. 885 (H.B. 2278), Sec. 2.01, eff. April 1, 2009.